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October 23, 2013

VIA ELECTRONIC FILING

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: AT&T Inc., Leap Wireless International, Inc., Cricket License Company, LLC, and Leap License Co, Inc. Seek Consent To The Transfer of Control of Licenses and Authorizations, WT Docket No. 13-193

Dear Ms. Dortch:

On October 8, 2013, AT&T Inc. and Leap Wireless International, Inc. filed the attached Notice before the California Public Utilities Commission outlining the benefits of its proposed transaction with Leap Wireless/Cricket. Specifically, AT&T noted that it has a nationwide 4G LTE/HSPA+ network that provides wireless customers with a level and variety of services that Cricket does not offer and cannot provide. Existing Cricket customers will therefore benefit from access to this more robust national network and a broader array of services. AT&T also noted that Cricket customers will experience better quality service at its most basic level. Leap currently provides coverage outside its limited network footprint by using other wireless carriers with which it has resale and roaming relationships. Cricket customers will experience better service on AT&T's nationwide network where service can be provided without reliance on third parties.

In the Notice, AT&T made a commitment that AT&T and Leap have referenced in their Joint Opposition to the Petitions to Deny (the "Joint Opposition"), which is being filed concurrently with this letter. Specifically, AT&T committed in the Notice that, for a period of 18 months after merger close, AT&T will offer all new and existing California customers a \$40 per month (including all taxes and fees) prepaid plan featuring unlimited talk, text and data, and no roaming charges in California. As stated in the Joint Opposition, AT&T intends to offer the same plan on a nationwide basis during the same period to ensure that a low-cost value plan is widely available to new and existing wireless customers. (*See* Joint Opposition at 6-7.)

In addition, you will note that AT&T made other commitments in the attached Notice that are specific to the rules and regulations of California.

In accordance with the Commission's rules, this letter is being filed electronically with the Secretary for inclusion in the public record.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' and 'M' followed by a horizontal line.

Joan Marsh

Attachment

cc: Ruth Milkman
James D. Schlichting
John Schauble



J. David Tate
General Attorney &
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October 8, 2013

By Messenger & Electronic Mail

Mr. Ryan Dulin
Director, Communications Division
California Public Utilities Commission
505 Van Ness Street, Room 3210
San Francisco, CA 94102

Re: Notice by AT&T Inc. of Proposed Indirect Transfer
of Control of Cricket Communications, Inc. (U 3076 C)

Dear Mr. Dulin:

AT&T Inc. ("AT&T") and Leap Wireless International, Inc. ("Leap"), and its California operating company, Cricket Communications, Inc. (U 3076 C) ("Cricket"), pursuant to *Re Mobile Telephone Service and Wireless Communications*, Decision No. 95-10-032, 62 Cal. P.U.C.2d 3, 19 (1995), hereby provide the Commission thirty days advance notice of a transaction that would result in the indirect transfer of control of a California CMRS provider, Cricket. Cricket is currently a direct subsidiary of Leap, and, following the completion of the transaction described below, it will become an indirect subsidiary of AT&T.

A newly-formed, wholly-owned AT&T subsidiary, Mariner Acquisition Sub Inc., will be merged into Leap, and Leap will be the surviving entity with its current subsidiaries, including Cricket, the registered CMRS provider in California. AT&T will retain the Cricket brand name and utilize Cricket's name recognition and distribution channels to expand Cricket service offerings in California. This indirect transfer of control is in the public interest for a number of reasons:

First, service to Cricket's customers will be improved and expanded, with access to AT&T's nationwide 4G LTE/HSPA+ network and AT&T's financial resources. Cricket will be able to expand its service to customers in geographic areas outside of its existing network footprint and where it likely would not provide service absent this transaction. Cricket uses

CDMA technology and has deployed only a 3G network in California. This expansion will increase consumer choice and competition for wireless services in the expanded area. Once Cricket customers have migrated to AT&T's 4G network, Cricket's existing customer base will experience better service quality, a superior choice of devices and broader array of services (including the option of choosing low-cost devices and low-cost services) and a much larger geographic service area in which they can use their devices without roaming charges or restrictions.

Second, existing and new customers of both AT&T and Cricket will benefit from AT&T deploying Leap's holdings of unused AWS and PCS spectrum, which will be used to expand and enhance the capacity of AT&T's LTE network. Today, Cricket has no LTE in California. After the transaction, the deployment of Leap's spectrum for LTE will result in greater spectral efficiencies, including improvements in throughput speeds, peak data rates, and latency. Further, with the integration of the AT&T and Cricket networks, Cricket's complementary cell sites will improve network capacity and performance while reducing overall network expenses by eliminating redundant sites and by reducing roaming, backhaul, and interconnection expenses.

Third, the indirect transfer of control of Cricket will have no adverse effect on competition in California. Competition in the wireless business in California is – and will continue to be – intense. Cricket's overall market share in California is estimated to be less than 1%. In the few areas in California where Cricket has facilities-based operations, all four nationwide carriers have facilities and will continue to provide service and competition. Further, AT&T and Cricket are not close competitors, as evidenced by their service offerings and other relevant evidence.¹

As the Commission is aware, AT&T has requested approval from the Federal Communications Commission ("FCC") to acquire control of the CMRS licenses held by all affiliates of Leap, including the licenses used by Cricket to provide service in California, and the Department of Justice ("DOJ") is conducting its own separate review of any competitive aspects of the transaction.² AT&T and Leap anticipate that review by the DOJ and FCC will proceed

¹ See, Section II. F, below.

² A complete copy of the AT&T/Leap FCC filing, Description of Transaction, Public Interest Showing and Related Demonstrations (FCC Form 603), dated August 1, 2013, is attached hereto as Exhibit A. Also, on August 20,

expeditiously so that the parties will be in a position to close the transaction promptly. AT&T, Leap, and Cricket submit this letter to provide the Commission with all relevant information regarding the contemplated transaction.³

I. The Background of the Transaction

A. The Companies and the Structure of the Transaction

AT&T is a Delaware corporation with its headquarters in Dallas, Texas. AT&T is a holding company that does not provide any services directly in California. AT&T provides wireless services in California through New Cingular Wireless PCS, LLC (U 3060 C), and its affiliated wireless entities.

Leap is a Delaware corporation with its headquarters in San Diego. Leap's subsidiary, Cricket, provides wireless service in California and elsewhere, offering customers flat-rate, unlimited voice and data service with no overage charges on a prepaid basis. Cricket does not require credit checks, long-term contracts, or termination fees. Cricket's customer base historically has been largely comprised of value-seeking customers. As a designated Eligible Telecommunications Carrier ("ETC"), Cricket also provides federal Lifeline Service in California. Cricket provides facilities-based service in the San Diego, Fresno, Modesto, Visalia-Tulare-Porterville, California RSA 4 (Madera), and California RSA 12 (Kings) CMAs. In areas outside this network footprint, Cricket provides coverage through resale and roaming relationships with other wireless carriers.

AT&T will acquire Leap in an all cash transaction for \$15.00 per share, with an expected total value of approximately \$1.3 billion.⁴ AT&T will also assume all of Leap's outstanding

2013, AT&T/Leap submitted a supplemental filing to the FCC in response to the request of the Commission Staff. That filing, which contains confidential and highly confidential information and as it was amended on August 26, 2013, is attached hereto as Exhibit B. The Commission's Decision No. 95-10-032, noted above, requires wireless carriers to provide the Communications Division with 30-days advance written notice of the transfer of ownership control of a CMRS provider. In submitting this notice, AT&T and Leap do not waive, but specifically reserve, all of their rights under federal law, including the Federal Communications Act and the Federal Communications Commission's rules and decisions.

³ In December of 2012, the Commission authorized T-Mobile USA, Inc. to acquire MetroPCS's California operations after the thirty-day notice period without any further Commission review. *See* Notification of Proposed T-Mobile and MetroPCS Transaction-Transfer of Control, dated November 8, 2012, to Michael Amato, Acting Director Telecommunications Division. In California, MetroPCS covers approximately six times the population and more than three times the area covered by Cricket.

indebtedness. As of June 30, 2013, Leap had approximately \$3.6 billion of outstanding indebtedness (net debt of approximately \$2.7 billion). Mariner Acquisition Sub Inc., a newly formed, wholly-owned subsidiary of AT&T, will be merged with and into Leap. Leap will be the surviving entity and will become a wholly-owned subsidiary of AT&T.⁵ Cricket will continue to exist as a separate operating entity in California with its current license.

AT&T and Cricket are well-established providers of wireless service that are known to the Commission and that are recognized for providing valuable services in California. The Commission's regulatory authority over Cricket will not change or be diminished as a result of this transaction.

B. The Integration Plan

AT&T's integration plans at this time are preliminary and, as such, remain subject to change. However, the Public Interest Statement and related materials filed with the FCC provide considerable detail regarding AT&T's preliminary plans.⁶ Moreover, AT&T has an established and successful track record of integrating complex, value-creating acquisitions (e.g., Centennial Communications Corp., former Alltel assets acquired from Verizon Wireless, and the AT&T Wireless/Cingular merger).⁷

The primary integration efforts will occur in the wireless networks of both companies. Cricket's current network uses less than half of its spectrum in the areas where it provides

⁴ Leap's shareholders will also receive a contingent value right entitling them to the proceeds from the sale of Leap's 700 MHz A Block in Chicago. The Chicago license will be separately held by a subsidiary of AT&T, but managed by a Leap stockholders' representative to resolve technical issues relating to adjacent Channel 51 and to conduct the sale process. The transaction, and its background, is explained further in Leap's Definitive Proxy Statement (SEC Schedule 14A) submitted herewith in Exhibit C, filed on September 17, 2013. In particular, see Leap's discussion of the Background of the Merger (p. 27 *et seq.*) and its statement of Reasons for the Merger (p. 35 *et seq.*). Additional information is contained in AT&T Inc.'s Form 8-K, Exhibit D hereto.

⁵ AT&T Inc., as noted above, is providing this notice pursuant to Decision No. 95-10-032, and both AT&T and Leap have subsidiaries that provide wireless service in California. This Commission's Decision No. 13-05-035, dated May 23, 2013 (*Decision Addressing Revision to the Certification Processes for Telephone Corporations Seeking or Holding Certificate of Public Convenience and Necessity, and Wireless Carriers Seeking or Holding Registration*, Decision No. 13-05-035), specifically amended its registration process but did not address or amend Decision No. 95-10-032, establishing the notice requirement. As a result, AT&T and Leap respectfully submit that the affidavit requirements of Decision No. 13-05-035 do not apply here. Without waiver of their position, however, AT&T submits its affidavit in Exhibit E hereto. Cricket submits its certification in Exhibit F hereto verifying that Cricket is in compliance with the Commission's reporting and surcharge submittal requirements.

⁶ See, e.g. Exhibit A, Hogg FCC Declaration, pp. 9-10; Exhibit B, August 20, 2013, Supplemental FCC Filing, Exh. 3-7.

⁷ See Exhibit A, Moore FCC Declaration, ¶¶ 25 – 28.

facilities-based service, and Leap holds additional unused AWS and PCS spectrum covering approximately 41 million people outside its network footprint in various parts of the country. Leap's AWS and PCS spectrum holdings are complementary to AT&T's LTE spectrum deployment, and AT&T will use Leap's spectrum to deploy its LTE network in a more spectrally efficient manner that will result in faster and better quality LTE service to both Cricket and AT&T customers in California and elsewhere.⁸

As AT&T integrates both companies and expands the combined network, Cricket customers will be transitioned off of Cricket's 3G CDMA network and on to AT&T's 4G network. As this occurs, AT&T will be able to integrate many existing Cricket cell sites (preliminarily estimated to number a few thousand across Cricket's network footprint) into its network and will reuse Leap's spectrum in a more efficient manner. AT&T estimates that it will be able to transition Cricket customers to AT&T's network in all affected markets within 18 months after closing.

After this transaction closes, AT&T will combine its nascent Aio Wireless operations, which offers no contract service, with Cricket's existing operations. AT&T will maintain the Cricket brand name and Cricket's sales and distribution systems. After close, AT&T will optimize the combined company's distribution network to enhance both retail coverage and customer service, while eliminating significant costs.⁹

In the integration process, AT&T will treat Cricket and AT&T's employees fairly. AT&T is one of the largest private-sector employers of full-time union labor in the country. AT&T respects the rights of its workers by remaining neutral and allowing them the choice of union representation. Because AT&T intends to maintain Cricket's sales and distribution systems, jobs in these areas largely will be preserved. Overall, force reductions will largely occur through natural attrition across the work forces of both companies.

II. AT&T's Indirect Acquisition of Control of Cricket is in the Public Interest.

A. Low-Cost Value Plans Will Continue to be Available to California Customers.

⁸ Because AT&T also uses PCS spectrum for AT&T's HSPA+ technology, AT&T will have the flexibility to use a portion of Leap's PCS spectrum on AT&T's HSPA+ network as required to support transitioning customers.

⁹ For the Commission's information, a side-by-side comparison of certain AT&T and Cricket California metrics is attached hereto as Confidential Exhibit G.

AT&T will retain and expand the Cricket brand and intends to attract and address the needs of prepaid subscribers, including those who value low-cost options. In California, AT&T will acquire Cricket's existing retail stores and dealer relationships. After the transaction closes, Cricket customers will continue to have in-store access to attractive third-party equipment financing opportunities. In addition, for eighteen months after merger closing, existing Cricket customers as of the merger close may keep their existing rate plans, provided the customer does not suspend or terminate service.¹⁰ Likewise, for eighteen months following the merger close, AT&T will offer a \$40 per month prepaid plan featuring unlimited talk, text and data, and no roaming charges in California. This plan will be available to existing and new California customers statewide.

B. Lifeline Discounts Will Continue to be Available.

Cricket is today one of the four wireless carriers in California designated as an ETC to offer federal Lifeline wireless telephone service discounts. For a period of eighteen months after merger closing, Cricket will remain an ETC in California and will continue to provide the federal Lifeline discount to existing and new Lifeline-eligible customers who reside in the geographic area served by Cricket's facilities-based CDMA network at merger closing.¹¹ In any application to relinquish Cricket's ETC status in California, the effective date will be no earlier than eighteen months after merger closing.¹²

C. Cricket's Brand Will Continue and Expand.

AT&T is looking forward to rolling out the Cricket brand nationally, expanding it to other geographic areas beyond Cricket's current footprint and investing in ways that Leap could not. The Cricket brand has widespread customer recognition and retail distribution through

¹⁰ A customer "terminates" service by affirmatively canceling service and/or moving to another carrier's service. A customer is "suspended" and terminated automatically only after all of the following occurs: (1) The customer fails to pay in advance for the following month; (2) The customer's account is then "hot-lined" for 30-days during which time the customer cannot make or receive calls, other than to call out to Cricket customer service and 911; and (3) The customer fails to pay for that month's service during the 30-day "hot-lined" period.

¹¹ AT&T will continue to make this federal Lifeline discount available consistent with current state or federal lifeline rules. If those rules change or are modified, AT&T reserves its right to modify this commitment prior to the expiration of the eighteen-month period.

¹² To summarize: Subject to the terms above, existing Cricket customers may keep their rate plans if they wish, new and existing Cricket customers will be offered the \$40 per month prepaid plan described above (in addition to the combined company's other offerings), and new and existing customers *who are Lifeline-eligible* will receive the Lifeline discount.

Cricket's stores and dealerships in its current network footprint, which provide a backbone for an expedited national rollout of the brand. In addition, Cricket's experience in marketing and selling prepaid/no-contract service, its distribution network located in close proximity to target customers, and its existing customer base provide a solid platform to compete on a nationwide basis. By combining these Leap assets with AT&T's nationwide 4G LTE/HSPA + network, advanced devices and services, and financial resources, the combined company more quickly will bring consumers nationwide a higher-quality, more robust, and competitive prepaid offering.

Cricket's current facilities-based service, as evidenced in California, is focused on certain geographic areas (San Diego and areas in the Southern San Joaquin Valley), and Cricket is not, nor does it have the resources or current plans to become, a national facilities-based carrier.¹³ Cricket's business plan has been focused on providing facilities-based service only in selected areas. As a practical matter, Leap's financial, spectrum, and other limitations, have hindered its ability to invest in expanding and improving its business. In contrast, T-Mobile is aggressively deploying 4G service, and its recent acquisition of MetroPCS, a provider of prepaid services that is substantially larger than Cricket, has resulted in the nationwide expansion of that brand beginning with 15 additional geographic areas, including Fresno and San Diego.¹⁴ T-Mobile explicitly has stated that it plans to target Cricket customers.¹⁵ Sprint's recent acquisition by SoftBank and its transaction with Clearwire will further expand Sprint's 4G network upgrades and intensify competition to attract value-conscious customers to prepaid/no-contract services. This transaction will enable the Cricket brand to compete nationwide, stimulating wireless competition and innovation in California and benefitting all wireless customers, particularly those in the value-conscious prepaid sector, benefits that would not arise but for this transaction.

¹³ Exhibit H includes Cricket's Coverage Maps.

¹⁴ Press Release, T-Mobile, MetroPCS Takes on New Markets: Doubles Reach in Less than Three Months (July 25, 2013), available at <http://investor.t-mobile.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1841270&highlight=>.

¹⁵ See, e.g., Sue Marek, *T-Mobile CEO Hints at New Prepaid Plan, Says He's 'Intrigued' by Dish's Vision*, FierceWireless (July 12, 2013), available at <http://www.fiercewireless.com/story/t-mobile-ceo-hints-new-prepaid-plan-says-hes-intrigued-dishs-vision/2013-07-12> (quoting T-Mobile USA's CEO, John Legere, characterizing the company's expansion of the MetroPCS brand into 15 new geographic areas as a strike at Cricket's customer base: "The best way to think about [the expansion] is T-Mobile network, T-Mobile devices, Leap customers.").

D. Cricket's Existing Customers will Experience Better Service With Access to AT&T's Network.

AT&T has a nationwide 4G LTE/HSPA+ network that provides its wireless customers with a level and variety of services that Cricket does not offer and cannot provide. For example, in June of this year, AT&T launched its 4G LTE service in Visalia, California, which is part of Cricket's facilities-based territory.¹⁶ As they transition to the AT&T network, existing Cricket customers will benefit from access to this more robust California and national network as well as a broader array of services.

The combined company will offer Cricket customers access to AT&T's nationwide network footprint, superior choice in handsets, more robust data services, and Wi-Fi hotspots across the country. Cricket customers will retain the benefit of low-cost prepaid/no-contract service, with the additional advantages of an expanding nationwide 4G LTE/HSPA+ network and the state-of-the-art voice and data services it provides. These benefits are especially important to minorities and low-income customers, who, as a recent Pew Research Center report concluded, are particularly reliant on access to the internet from their wireless telephone devices.¹⁷

Cricket's customers' experience will also be substantially enhanced while using their devices outside of Cricket's facilities-based footprint. Today, Cricket provides wireless service outside its limited facilities-based footprint through resale and roaming relationships it has established with other wireless carriers. The agreements that Cricket has with these third parties provide only 3G services and 4G services on a limited selection of Cricket phones in a portion of the nation. Cricket limits its customers' percentage of voice and data usage on partner networks¹⁸ and charges extra for roaming on non-partner networks. After the merger, Cricket's customers will have access to AT&T's much larger network footprint without being limited in the percentage of minutes and data that they can use (as they are today on Cricket's partner

¹⁶ See Exhibit I, an AT&T News Release concerning wireless capital investment, including multiple areas where 4G LTE is now available.

¹⁷ See Maeve Duggan, *Pew Research Center, Internet & American Life Project, Cell Phone Activities 2013* (Sept. 16, 2013), available at: <http://pewinternet.org/Reports/2013/Cell-Activities.aspx>.

¹⁸ Cricket's Terms of Use provide: "The primary use of your [a customer's] Device must be for domestic purposes within the Cricket-owned network. Cricket reserves the right, without notice, to deny, terminate, modify, disconnect or suspend service if more than 50% of your voice and/or data usage is on a Partner network."

networks), and without incurring roaming charges that can be as high as \$.25 a minute. The extent of these benefits is shown by a comparison of Cricket's California facilities-based and partner networks coverage with AT&T's California network footprint in Exhibit J.¹⁹ Further, after the merger Cricket's customers will have access to AT&T's nationwide 4G network. As a result of these efficiencies, "consumers can expect to benefit from . . . reduced quality-adjusted prices due to better network quality and lower marginal costs."²⁰

AT&T intends to complete the migration of existing Cricket customers to its nationwide network within eighteen months. As demonstrated in the recent T-Mobile/MetroPCS merger, prepaid customers frequently upgrade their devices; 60-65 percent of MetroPCS' customer base upgrade their handsets each year.²¹ Cricket estimates that its customers upgrade their handsets at a similar rate over an eighteen month period. Post transaction, Cricket's customers will be able to enjoy a superior array of devices, including the Nokia Lumia 620, and other smartphones and devices when migrating to AT&T's network.²²

E. California Customers Will Benefit From a More Efficient Use of the Existing Spectrum and Network.

The availability of spectrum, as the Commission knows, is essential to the provision of wireless service and competition. As the FCC recently stated, "spectrum is a key input for the provision of mobile wireless services . . ." and the availability of spectrum "is critical to promoting competition, investment and innovation." *Sixteenth Report*, ¶¶ 85-86.²³ The industry,

¹⁹ Exhibit J contains three maps showing AT&T's and Cricket's approximate coverage in California. Map 1 shows Cricket's current facilities-based coverage and partner network coverage where no roaming charges would be incurred. Map 2 shows AT&T's home coverage where no roaming charges would be incurred. Map 3 shows Cricket's coverage on top of AT&T's coverage, which demonstrates the scope of the expanded coverage.

²⁰ Exhibit A, Israel FCC Declaration, ¶ 8, *see id.*, ¶¶ 73-74.

²¹ *See, e.g. Applications of Deutsche Telekom AG, T-Mobile USA Inc., and Metro PCS Communications, Inc.*, WT Dkt No. 12-301, Description of "Transaction, Public Interest Showing and Related Demonstrations", at 21 (Oct. 18, 2012) (stating that "60-65 percent of Metro PCS' customer base upgrades its handset" each year).

²² *See* Exhibit B, Supplemental FCC Filing, August 20, 2013, Exhibit 2, which is a preliminary list of devices that AT&T currently plans to offer Cricket customers.

²³ *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Sixteenth Report, 28 FCC Rcd 3700, FCC 13-34 (2013) ("*Sixteenth Report*").

the FCC and the Obama Administration repeatedly have recognized the ravenous demand for wireless service and that carriers need additional spectrum to meet this demand.²⁴

Within its network footprint (which includes parts of California), Leap is using only approximately 42 percent of its spectrum.²⁵ In addition, Leap holds unused AWS and PCS spectrum outside its network footprint covering about 41 million people in various parts of the country. In contrast, AT&T will incorporate this spectrum, which is compatible with AT&T's existing holdings, into and enhance the capacity of its rapidly expanding LTE network. This increased capacity will result in more reliable connections, more consistent and higher data speeds, and will directly benefit consumers with better service.

The customers of both Cricket and AT&T, and the public generally, will benefit from the efficiencies that result from the combination of both networks. As customers migrate from Cricket's network to AT&T's network, AT&T can reuse the Cricket spectrum in a more efficient manner. AT&T also will be able to integrate many complementary Cricket cell sites into its network, providing greater cell density, increasing network capacity, and improving network performance for customers of both companies. Both Cricket and AT&T customers will experience faster, higher quality service over the enhanced and expanded network that will result from the deployment of unused spectrum, the integration of the Cricket and AT&T networks, and the densification of cell sites. As a result of AT&T's generally more spectrally efficient HSPA+ and LTE technologies, customers of both companies, in particular Cricket customers who only have access to CDMA EVDO services today, will see improvements in throughput speeds and latency in many markets.²⁶ These speed and spectral efficiency improvements translate into an improved customer experience, including, among other benefits, faster streaming of video, faster uploading of image and video files, and a more responsive and robust web browsing experience.

²⁴ See, e.g., News Release, FCC Commissioner Jessica Rosenworcel on Presidential Memorandum Promoting Efficient Use of Spectrum by Federal Agencies (June 14, 2013) ("President Obama has recognized the importance of finding new spectrum to ensure America's leadership in mobile broadband.").

²⁵ The spectrum utilization percentages presented are calculated on MHz-POPs basis based on calculations performed in June 2013. Leap's network deployment changes from time to time and therefore these utilization percentages may change over time as well.

²⁶ CDMA EVDO is a third generation (3G) wireless technology that provides combined circuit-switched and packet-switched data and voice services.

Cricket customers, moreover, will enjoy access to AT&T's nationwide network post-transaction, rather than relying on third-party networks outside of Cricket's limited network footprint, further expanding the benefits of more seamless service and a better customer experience. Greater cell site density will enable faster data speeds and improved coverage by reducing places where customers experience dropped connections, dead spots, and coverage gaps. Overall, AT&T and Cricket customers will experience improvements in network accessibility and reliability.

F. The Transfer Will Have No Adverse Effect on Wireless Competition in California.

1. Cricket is a Regional Provider of Wireless Prepaid Service, Whose Product Offerings Are Not a Close Competitive Substitute for AT&T's.

The mobile wireless industry is extremely competitive and vibrant, exhibiting constant growth, innovation and change. Providers of mobile wireless services compete aggressively across many dimensions, and are increasingly seeking to attract customers with a wide array of rate plans, including unlimited postpaid and prepaid/no-contract plans, data service packages, and increasingly diverse devices. *See Sixteenth Report* ¶¶ 159, 161-64.

AT&T's acquisition of Leap will not have any adverse effect on competition in California because Cricket, which is a regional provider of wireless service in California and elsewhere, does not materially influence the competitive decisions of AT&T. The *FCC Staff Report* on the proposed AT&T/T-Mobile transaction concluded "for several reasons"²⁷ that regional providers, such as Cricket and MetroPCS, were not effective competition for AT&T. The *FCC Staff Report* found that Cricket and other regional providers "would likely need to substantially alter their existing business models and services to significantly constrain the nationwide providers" and expressed skepticism that the regional providers "would and could expand and compete effectively"²⁸

A comparison of the product offerings of Cricket and AT&T confirms the conclusions of the *FCC Staff Report*. Cricket's focus is on the value-conscious, prepaid/no-contract customers,

²⁷ *Application of AT&T Inc. & Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Staff Analysis and Findings, 26 FCC Rcd 16,184, 16,221 ¶ 62 (2011) ("FCC Staff Report").

²⁸ *Id.* at 16,221 ¶ 62.

while AT&T markets its products and services primarily to the premium postpaid sector of the business.²⁹ AT&T generally has not targeted prepaid customers to match the offerings of carriers like Cricket until its recent launch of its separate, start-up brand, Aio Wireless. Aio Wireless is just starting to offer its service to California customers.³⁰ Aio Wireless, moreover, faces significant challenges to establish its nationwide retail distribution, build brand recognition, and develop a significant customer base.

An analysis of porting data from California likewise establishes that there is limited porting of customers either from Cricket to AT&T or from AT&T to Cricket.³¹ Competition for Cricket's core customer base will only intensify in the future with T-Mobile's recent acquisition of MetroPCS and Sprint's acquisition by SoftBank. As T-Mobile told this Commission in notifying it of the MetroPCS license transfer, "Newco" (the combined T-Mobile/MetroPCS) "intends to be the leading value carrier in the U.S., with a focus on offering a variety of appealing plans to compete aggressively for customers seeking affordability . . ."³²

We have submitted for the Commission's information the Herfindahl-Hirschman Indices ("HHI") and estimated market shares for carriers for each California CMA and DMA in which Cricket operates.³³ In reviewing these data, the Commission should have in mind that HHIs and similar metrics have many limitations and are only one indicator of potential competitive effects in a particular market.³⁴ It is for this reason that antitrust authorities generally recognize that ". . . market performance metrics provide more direct evidence of competitive outcomes and the strength of competitive rivalry than intermediate factors, such as concentration measures." *Sixteenth Report*, ¶ 10. Even taking these data at face value, however, there is no cause for concern. Cricket's market share in California is less than 1% statewide, and, as a result, the

²⁹ Exhibit K contains AT&T and Cricket Rate Plan Summaries.

³⁰ Aio Wireless is only available in stores in limited metropolitan areas, none of which is in California. Aio first began limited online sales in California in September of this year and has plans to open stores in California later this fall.

³¹ Exhibit L hereto is Highly Confidential AT&T and Leap Porting Data.

³² T-Mobile USA, Inc./MetroPCS Communications Letter to Michael Amato, Acting Director, Telecommunications Division, California Public Utilities Commission (November 8, 2012), p. 19.

³³ Exhibit M hereto is Confidential California HHI and Market Share Data. The HHI traditionally has been used as a measure of concentration in competitive analysis. The FCC in its recent reviews of transactions in analyzing local markets has used CMAs, primarily for evaluating potential spectrum concentration. *Sixteenth Report*, ¶ 49, n. 157.

³⁴ See, e.g., Exhibit A, Israel FCC Declaration, ¶ 17 *et seq.*

statewide change in HHI associated with this transaction is likewise minor. From a customer's perspective, moreover, the myriad public benefits of this transaction will offset any slight change in market shares.

The Commission should understand that, taking an appropriately forward looking perspective on competitive effects, Cricket's current market share in any area likely overstates Cricket's future competitive significance. While other wireless carriers (Sprint and MetroPCS) have bolstered their financial resources and competitive position, Cricket's performance has been in decline. Leap has not earned a profit in the last seven years³⁵ and has incurred hundreds of millions of dollars in net losses over the past several years. As of June 30, 2013, Cricket has experienced net subscriber losses in each of the last five quarters, and its total customer base has declined by nearly 1.4M customers since the first quarter of 2012, a 22 percent decline. As a result, Cricket has been forced to reduce costs and capital expenditures and is thus falling behind other competitors in network upgrades and performance. Leap has no current plans to expand its spectrum holdings in any significant way or to build commercial facilities beyond its current network footprint.

Most importantly, however, in the seven California CMAs where Cricket operates, all four of the nationwide carriers have facilities and a market presence, as reflected in AT&T's share estimates, which show Verizon Wireless, Sprint, and T-Mobile in each of these CMAs. In short, in each of these CMAs consumers will continue to receive the benefits of robust competition. Here, as in the recent T-Mobile/Metro PCS transfer reviewed by the Commission, in every local California area in the proposed transaction where Cricket operates, "all four 'nationwide' carriers operate facilities and will continue to do so after closing." T-Mobile/Metro PCS November 8, 2012 Letter, p. 19. Further, there will continue to be an abundance of competition for prepaid wireless customers in Cricket's territory after the merger. For example, as of September 2013, there were at least ten different brands of wireless service competing with Cricket with numerous competitive prepaid wireless offerings.³⁶ In fact, a review of online prepaid offers from these providers in Cricket's California service area shows 50 plan options with two dozen plans under \$50 containing a variety of features (text, data, voicemail, etc.) and

³⁵ Its only profitable quarter in recent years was due primarily to recognizing a gain on the sale of some AWS and PCS spectrum, rather than operating profits. Exhibit A, Hutcheson FCC Decl. ¶ 6.

³⁶ Exhibit N is a chart that reflects these current examples of California prepaid wireless offerings.

device choices. In addition, there are a myriad of choices beyond the monthly offers including daily and per minute plans.

2. The Change of Control of Cricket Will Not Create Spectrum Holding Concerns in California.

The combined spectrum holdings of AT&T and Leap in California do not raise competitive concerns.³⁷ The FCC's spectrum screen identifies local markets where the combined companies following a completed transaction would possess more than approximately one-third of the total spectrum suitable and available to provide mobile telephone/broadband service.

The spectrum holdings data show that AT&T and Leap would have combined spectrum holdings that overlap in nine California CMAs, involving thirteen different counties. In five of these CMAs, which include San Diego and Fresno, the combined holdings are below the FCC's spectrum screen. Cricket has no network operations in two of the CMAs that are above the screen (Alpine and Mono), nor in one of the counties in the Madera CMA that are above the screen (San Benito).

The combined holdings exceed the FCC's spectrum screen in only two CMAs in which Cricket has operations (Modesto and Madera), and Cricket has operations in only two of the three counties in the Madera CMA (Madera and Merced Counties). Where the FCC's spectrum screen is triggered, it merely indicates the need for the FCC to undertake a more detailed analysis of spectrum availability and competition in the area to prevent a particular carrier from acquiring so much spectrum that it could hinder other carriers in providing service there. Here, the FCC should have no concerns about the limited spectrum concentration in these few CMAs, particularly given the robustly competitive nature of the wireless business in California and the fact that other national service providers in these areas (Verizon, Sprint, T-Mobile) all have sufficient spectrum and networks to provide service.

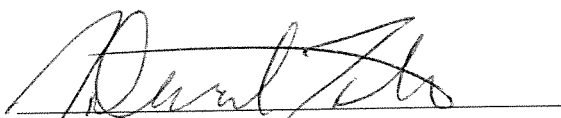
As shown above, this wireless indirect transfer of control is in the public interest for numerous reasons, including the substantially improved and expanded service that Cricket's

³⁷ Exhibit O hereto is Spectrum Holdings Data for California. The combined spectrum holdings data presented to the Commission for California is by county and has been extracted from the spectrum holding data submitted by AT&T/Leap in Appendix A to its FCC public interest showing.


customers will experience, along with access to AT&T's nationwide 4G LTE/HSPA+ network. Cricket's expanded and enhanced service will increase consumer choice, particularly for low-cost customers. Further, this transaction will have no adverse effect on California's intense wireless competition.

If there are any questions regarding this notification or the proposed transaction, please contact the undersigned at your earliest convenience.

Respectfully submitted this 8th day of October 2013.



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EXHIBIT INDEX

- A. Public Interest Showing and Related Demonstrations Filed With the FCC, Including Supporting Declarations of
 - Rick L. Moore, Senior Vice President, AT&T Inc.
 - William Hogg, Senior Vice President of Network Planning and Engineering, AT&T Services, Inc.
 - S. Douglas Hutcheson, Chief Executive Officer, Leap Wireless International, Inc.
 - Dr. Mark A. Israel, Executive Vice President, Compass Lexecon
- B. Supplemental FCC Filing, August 20, 2013 Letter to Marlene H. Dortch, Esq. from William E. Cook, Esq., and Attachments Containing Confidential and Highly Confidential Information (as amended August 26, 2013)
- C. Leap Wireless International, Inc. SEC Schedule 14A, Definitive Proxy Statement, filed September 17, 2013
- D. AT&T Inc. SEC Form 8-K
- E. AT&T Inc. Affidavit
- F. Cricket Communications Inc. Certification
- G. Confidential AT&T and Cricket California Side-by-Side Comparison Metrics
- H. Cricket Coverage Maps
- I. AT&T August 12, 2013 News Release of California Wireless Network Investment
- J. Cricket and AT&T Roaming Maps
- K. AT&T and Cricket Prepaid Rate Plan Summaries
- L. Highly Confidential AT&T and Leap Porting Data
- M. Confidential AT&T California HHI and Market Share Data
- N. Examples of California Prepaid Wireless Offerings (September - October 2013)
- O. Spectrum Holdings Data for California